

commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get full instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of the comment, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

77. *Initial Paperwork Reduction Act Analysis.* This *Further Notice of Proposed Rulemaking* ("Notice") may contain either proposed or modified information collections subject to the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork burdens, we invite OMB, the general public, and other Federal agencies to take this opportunity to comment on the information collections contained in this *Further Notice*, as required by the Paperwork Reduction Act of 1995. Public and agency comments are due at the same time as other comments on the *Further Notice*. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, 445 Twelfth Street, S.W., Room 1-C804, Washington, DC 20554, or via the Internet to Judith-B.Herman@fcc.gov and to Kristy L. LaLonde, OMB Desk Officer, 10234 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to [Kristy L. LaLonde @omb.eop.gov](mailto:Kristy.L.LaLonde@omb.eop.gov), or via fax at 202-395-5167.

78. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act,¹¹⁸ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *Further Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix D. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Further Notice*, and they should have a separate and distinct heading designating them as responses to the IRFA.

79. *Accessibility Information.* To request materials in accessible formats for people with disabilities (braille, large print, electronic file, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

¹¹⁸ See 5 U.S.C. § 603.

80. *Paperwork Reduction Act of 1995 Analysis.* This *Report and Order* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding. Written comments by the public on the proposed new and modified information collection(s) are due 60 days from date of publication of this *Report and Order* in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to Judith-B.Herman@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW, Washington, DC 20503, or via the Internet to [Kristy L. LaLonde@omb.eop.gov](mailto:Kristy.L.LaLonde@omb.eop.gov), or via fax at 202-395-5167.

81. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act,¹¹⁹ the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this *Report and Order*. The FRFA is set forth in Appendix C.

82. *Congressional Review Act.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

83. *Additional Information.* For additional information on this proceeding, please contact Kim Matthews, Policy Division, Media Bureau at (202) 418-2154.

VIII. ORDERING CLAUSES

84. **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 2, 4(i), 303, 303a, 303b, 307 of the Communications Act of 1934, 47 U.S.C §§ 151, 152, 154(i), 303, 303a, 303b, and 307, this *Report and Order and Further Notice of Proposed Rule Making* **IS ADOPTED**.

85. **IT IS FURTHER ORDERED** that pursuant to the authority contained in Sections 1, 2, 4(i), 303, 303a, 303b, and 307 of the Communications Act of 1934, 47 U.S.C §§ 151, 152, 154(i), 303, 303a, 303b, and 307, the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix B. It is our intention in adopting these rule changes that, if any provision of the rules is held invalid by any court of competent jurisdiction, the remaining provisions shall remain in effect to the fullest extent permitted by law.

86. **IT IS FURTHER ORDERED** that 47 C.F.R. Sections 73.670(b) and (c) and 76.225(b) and (c), as revised in Appendix B and which address the display of internet addresses in analog and digital programming and on cable systems, **SHALL BE EFFECTIVE** February 1, 2005. In addition, the policies announced herein regarding application of the commercial limits and policies to digital programming shall also be effective on that date. Revised rule section 47 C.F.R. Section 73.671(c)(5), which requires that a program display on the television screen throughout the program the symbol E/I in order to be considered core, contains information collection requirements under the PRA and is, therefore, not effective until approved by OMB. The FCC will issue a Public Notice announcing the effective date for this section. The FCC will also issue a Public Notice announcing when the revised FCC Form 398 will be available for use by licensees and when licensees must commence using the revised form to report digital core programming. Revised rule sections 47 C.F.R. § 73.670, Note 1 and 47 C.F.R. § 76.225, Note 1, which contain the revised definition of commercial matter, will become effective January 1, 2006. Revised rule section 47 C.F.R. § 73.671, Note 3, which contains the revised safe harbor processing

¹¹⁹ See 5 U.S.C. § 604.

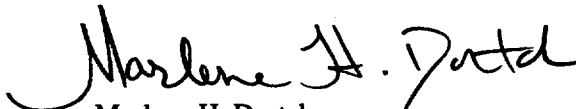
guideline for digital broadcasters as well as our rule announced herein regarding the limit on repeats of core programming by digital broadcasters, will become effective January 1, 2006. In addition, revised rule section 47 C.F.R. § 73.671 Note 4, which contains the newly adopted limit on the number of preemptions of core programming by analog and digital broadcasters under the safe harbor processing guideline to no more than 10 percent of core programs in each calendar quarter, will also become effective January 1, 2006.

87. **IT IS FURTHER ORDERED** that, pursuant to 47 U.S.C. § 155(c), the Chief, Media Bureau, is **GRANTED DELEGATED AUTHORITY** to revise FCC Form 398 as indicated in this Order.

88. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Report and Order and Further Notice of Proposed Rule Making*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

89. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this *Report and Order and Further Notice of Proposed Rule Making* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Marlene H. Dortch". The signature is fluid and cursive, with the first name "Marlene" being the most prominent part.

Marlene H. Dortch
Secretary

APPENDIX A**LIST OF COMMENTS****Comments**

Alaska Broadcaster's Association, et al.
Association of America's Public Television Stations and the Public Broadcasting Service
Association of America's Public Television Stations
Association of Local Television Stations, Inc.
Association of National Advertisers and the American Association of Advertising Agencies
Belo Corp.
Capitol Broadcasting Co., Inc.
CBC (Gore Report)
Center for Media Education, et al.
Consumer Federation of America
Children's Media Policy Coalition
Children Now
Consumer Federation of America
John Emerson
Christopher J. Hauser
Henry J. Kaiser Family Foundation
Named State Broadcasters Association
National Association of Broadcasters
National Broadcasting Company, Inc.
National Cable Television Association
Maranatha Broadcasting Company, Inc.
Motion Picture Association of America
Paxson Communications Corporation
People for Better TV
Sesame Workshop
Sinclair Broadcast Group, Inc.
Viacom Inc.
WGBH/CPB/NCAM

Reply Comments

A&E Television Networks
Alaska Broadcasters Association, et al.
Annenberg Public Policy Center
Annenberg School for Communications USC
American Advertising Federation
AOL Time Warner Inc.
APTS/PBS
Association of America Public Television Stations
Association of Local Television Stations, Inc.
Belo Corp.
CFA
Sandra A. Calvert
Campaign Legal Center
Capitol Broadcasting Co., Inc.

Cavalier Group, LLC

Center for Media Education, et al.
Channel 3 of Corpus Christi, Inc.
Children's Media Policy Coalition
Children Now
Civil Rights Organization
Tim Collings
Comcast Corporation
Consumer Federation of America
Courtroom Television Network LLC
Geoffrey Cowan, et al.
DIRECTv, Inc.
DTV Access Project et al.
John Emerson
Georgetown University
Kankola Telephone Association, Inc., et al.
KIDSNET
Dale Kunkel
Paul J. McGeady
Media Access Project
Media General Communications, Inc.
MTC North, Inc.
Morality in Media, Inc.
Motion Picture Association of America, Inc.
National Association of Broadcasters
National Cable & Telecommunications Association
National Minority TV, Inc.
Named State Broadcasters Associations
Noncommercial Educational Television Licenses
Office of Advocacy, U.S. Small Business Administration
Paxson Communications
People for Better TV
Public Safety Wireless Network
Sharp Electronics Corporation
Siete Grande Television, Inc.
Sinclair Broadcast Group, Inc.
University of California, Los Angeles
Watch TV, Inc.
WB Television Network

APPENDIX B
RULE CHANGES

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended as follows:

Part 73 RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.670 is amended to add paragraphs (b) and (c) to revise Note 1 to read as follows:

Section 73.670 Commercial limits in children's programs.

(a) No commercial television broadcast station licensee shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays.

(b) The display of Internet website addresses during program material is permitted only if the website: 1) offers a substantial amount of *bona fide* program-related or other noncommercial content; 2) is not primarily intended for commercial purposes, including either e-commerce or advertising; 3) the website's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and 4) the page of the website to which viewers are directed by the website address is not used for e-commerce, advertising, or other commercial purposes (*e.g.*, contains no links labeled "store" and no links to another page with commercial material).

(c) The display of website addresses in children's programs is prohibited during both program material and commercial material when the site uses characters from the program to sell products or services.

Note 1: *Commercial matter* means air time sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's educational and informational programming.

* * * * *

3. Section 73.671 is amended to revise paragraphs (c) (5) and (c) (6) and add paragraph (c) (7) and to revise Note 2 and add Note 3 and Note 4 to read as follows:

§ 73.671 Educational and informational programming for children.

* * * * *

(c) For purposes of this section, educational and informational television programming is any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs. Programming specifically designed to serve the educational and informational needs of children ("Core Programming") is educational and informational programming that satisfies the following additional criteria:

* * * * *

(5) The program is identified as specifically designed to educate and inform children by the display on the television screen throughout the program of the symbol E/I;

(6) The educational and informational objective and the target child audience are specified in writing in the licensee's Children's Television Programming Report, as described in § 73.3526(e)(11)(iii); and

(7) Instructions for listing the program as educational/informational, including an indication of the age group for which the program is intended, are provided by the licensee to publishers of program guides, as described in § 73.673(b).

* * * * *

NOTE 2 to §73.671: Until analog channels are returned to the Commission, the Commission will apply the following processing guideline to analog stations in assessing whether a television broadcast licensee has complied with the Children's Television Act of 1990 ("CTA") on its analog channel. A licensee that has aired at least three hours per week of Core Programming (as defined in paragraph (c) of this section and as averaged over a six month period) will be deemed to have satisfied its obligation to air such programming and shall have the CTA portion of its license renewal application approved by the Commission staff. A licensee will also be deemed to have satisfied this obligation and be eligible for such staff approval if the licensee demonstrates that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of Core Programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of Core Programming. In this regard, specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children can count toward the three hour per week processing guideline. Licensees that do not meet these processing guidelines will be referred to the Commission, where they will have full opportunity to demonstrate compliance with the CTA (*e.g.*, by relying in part on sponsorship of Core educational/informational programs on other stations in the market that increases the amount of Core educational and informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts which enhance the value of children's educational and informational television programming).

NOTE 3 to §73.671: The Commission will apply the following processing guideline to digital stations in assessing whether a television broadcast licensee has complied with the Children's Television Act of 1990 ("CTA") on its digital channel(s).

(a) A digital television licensee providing only one stream of free digital video programming will be subject to the 3 hour/week Core Programming processing guideline discussed in Note 2 on that channel; *i.e.*, a licensee that has aired at least three hours per week of Core Programming (as defined in paragraph (c) of this section and as averaged over a six month period) on its main program stream will be deemed to have satisfied its obligation to air such programming and shall have the CTA portion of its license renewal application approved by the Commission staff. A licensee will also be deemed to have satisfied this obligation and be eligible for such staff approval if the licensee demonstrates that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of Core Programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of Core Programming. In this regard, specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children can count toward the three hour per week processing guideline. Licensees that do not meet these processing guidelines will be referred to the Commission, where they will have full opportunity to demonstrate compliance with the CTA (*e.g.*, by

relying in part on sponsorship of Core educational/informational programs on other stations in the market that increases the amount of Core educational and informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts which enhance the value of children's educational and informational television programming).

(b) (1) A digital television licensee providing streams of free digital video programming in addition to its main program stream will be subject to the processing guideline described in Note 3, paragraph a, on its main program stream and to the following guideline applied to the additional programming: $\frac{1}{2}$ hour per week of additional Core Programming (as defined in paragraph (c) of this section and as averaged over a six month period) for every increment of 1 to 28 hours of free video programming provided in addition to the main program stream. Thus, digital broadcasters providing between 1 and 28 hours per week of free video programming in addition to their main program stream will have a guideline of $\frac{1}{2}$ hour per week of core programming in addition to the 3 hours per week on the main program stream. Digital broadcasters providing between 29 and 56 hours per week of free video programming in addition to their main program stream will have a guideline of 1 hour per week of core programming in addition to the 3 hours per week on the main program stream. Digital broadcasters providing between 57 and 84 hours per week of free video programming in addition to their main program stream will have a guideline of $1\frac{1}{2}$ hours per week of core programming in addition to the 3 hours per week on the main program stream. The guideline will continue to increase in this manner for additional hours of free video programming.

(2) Broadcasters providing more than one stream of free digital video programming may air all of their additional core programming, apart from the 3 hours of core programming that must be aired on the main program stream, on one free video channel, or distribute it across multiple free video channels, at their discretion, as long as the stream on which the core programming is aired has comparable MVPD carriage as the stream whose programming generates the core programming obligation under the processing guideline described in Note 3, paragraph b. 1.

(c) For purposes of the guideline described in Note 3, sections a and b, at least 50 percent of core programming cannot be repeated during the same week to qualify as core. This requirement does not apply to any program stream that merely time shifts the entire programming line-up of another program stream and, during the digital transition, to core programs aired on both the analog station and a digital program stream.

NOTE 4 to § 73.671: No more than 10 percent of Core Programs may be preempted in each calendar quarter to qualify as Core Programming.

4. Section 73.673 is amended to read as follows:

§ 73.673 Public information initiatives regarding educational and informational programming for children.

Each commercial television broadcast station licensee shall provide information identifying programming specifically designed to educate and inform children to publishers of program guides. Such information shall include an indication of the age group for which the program is intended.

5. Section 73.3526 is amended by revising §§ 73.3526(e)(11)(iii) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(e)(11)(i) * * *

(iii) *Children's television programming reports.* For commercial TV broadcast stations, both analog and digital, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. By this date, a copy of the Report for each quarter is also to be filed electronically with the FCC. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in §73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. The Report shall also identify the program guide publishers to which information regarding the licensee's educational and informational programming was provided as required in §73.673, as well as the station's license renewal date. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicize in an appropriate manner the existence and location of these Reports.

* * * * *

Part 76 of Title 47 of the U.S. Code of Federal Regulations is amended as follows:

Part 76 MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

2. Section 76.225 is amended to revise paragraph b, add paragraphs c and d, and revise Note 1 to read as follows:

§ 76.225 Commercial limits in children's programs.

* * * * *

(b) The display of Internet website addresses during program material is permitted only if the website: 1) offers a substantial amount of *bona fide* program-related or other noncommercial content; 2) is not primarily intended for commercial purposes, including either e-commerce or advertising; 3) the website's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and 4) the page of the website to which viewers are directed by the website address is not used for e-commerce, advertising, or other commercial purposes (*e.g.*, contains no links labeled "store" and no links to another page with commercial material).

(c) The display of website addresses in children's programs is prohibited during both program material and commercial material when the site uses characters from the program to sell products or services.

(d) This rule shall not apply to programs aired on a broadcast television channel which the cable operator passively carries, or to access channels over which the cable operator may not exercise editorial control, pursuant to 47 U.S.C. 531(e) and 532(c)(2).

Note 1 to § 76.225: *Commercial matter* means air time sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's educational and informational programming.

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APPENDIX C

FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),¹ an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rule Making* ("Notice").² The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. One comment was received on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.³

I. Need for, and Objectives of, the Report and Order

The purpose of this proceeding is to determine how the existing children's educational television programming obligations and limitations on advertising in children's programs should be interpreted and adapted to apply to digital television broadcasting in light of the new capabilities made possible by that technology. First, we address the obligation of digital television ("DTV") broadcasters to provide children's educational and informational programming and, specifically, how that obligation applies to DTV broadcasters that use the multicast capability of their ATSC digital service to broadcast multiple program services. We adopt an approach pursuant to which digital broadcasters that choose to provide streams or hours of free video programming in addition to their required free over-the-air video program service will have an increased core programming benchmark roughly proportional to the additional amount of free video programming they choose to provide. Second, for both analog and digital broadcasters, we limit the number of preemptions allowed under our processing guideline to no more than 10 percent of core programs in each calendar quarter. Third, we amend our rule regarding on-air identification of core programming to require both analog and digital broadcasters to identify such programming with the same symbol, E/I, which must be displayed throughout the program in order for the program to qualify as core educational programming. Fourth, we clarify that the children's television commercial limits and policies apply to all digital video programming directed to children ages 12 and under. Fifth, we interpret the commercial time limits to require that the display of Internet website addresses during program material is permitted as within the time limits only if the website meets certain requirements, including the requirement that it offer a substantial amount of *bona fide* program-related or other noncommercial content and is not primarily intended for commercial purposes. Sixth, we revise our definition of "commercial matter" to include promotions of television programs or video programming services other than children's educational and informational programming. Finally, we seek comment on several additional proposals concerning the children's programming commercial limits and indicate our intention to issue a Public Notice in the near future seeking comment on broadcaster compliance with the Children's Television Act of 1990 ("CTA"). Our objectives in resolving these issues are to provide television broadcasters with guidance regarding their obligation to serve children as we transition from an analog to a digital television environment and to improve our children's programming rules and policies.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

The U.S. Small Business Administration ("SBA") filed the only comment in this proceeding

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 100 Stat. 857 (1996).

² *Notice of Proposed Rule Making, In the Matter of Children's Television Obligations of Digital Television Broadcasters*, 15 FCC Rcd 22946 (2000).

³ See 5 U.S.C. § 604.

responding to the IRFA.⁴ According to the SBA, the IRFA does not satisfy the requirements of the RFA, as it does not describe many of the "compliance requirements" contained in the *Notice* and their impact on small firms. The SBA also argues that the IRFA does not discuss significant alternatives that would accomplish the objectives while minimizing the significant economic impact on small entities. SBA states that it does not question the Commission's goals in this proceeding, but instead asks that the Commission seek ways to minimize the burdens on small business while still accomplishing its goals.⁵

The *Notice* described a number of possible ways of applying the current core programming processing guideline to digital broadcasters. These proposals were suggested by commenters responding to the *NOI* in this docket. It was not possible for the Commission to develop detailed estimates of the cost of adopting each of these proposals because the details of how any of the proposals would be implemented were not known. The *Notice* sought comment on these various proposals in large part to determine, in the view of broadcasters and others, which would be the preferable means of adapting our current rules. Commenters responding to the *Notice* address, among other issues, the cost of the various proposals and the advantages, from cost and other perspectives, of the approach they advocate. In determining what approach to adopt, the Commission carefully considered all of the comments, particularly those offering less burdensome means of accomplishing our stated objectives. The approach adopted in the *Report and Order* attempts to balance the need to adapt our current rules to the digital environment and to improve our children's programming rules and policies with the need to minimize costs where possible and provide broadcasters with flexibility to continue to explore different ways of employing digital technology.

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules.⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" under section 3 of the Small Business Act.⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁸ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹

Television Broadcasting. The Small Business Administration defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business.¹⁰ Business concerns

⁴ See Letter from Jere W. Glover, Chief Counsel for Advocacy, and Eric E. Menge, Assistant Chief Counsel for Telecommunications, U.S. Small Business Administration, to William E. Kennard, Chairman, FCC, dated January 9, 2001.

⁵ *Id.* at 2.

⁶ 5 U.S.C. § 604(a)(3).

⁷ 5 U.S.C. § 601(6).

⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁹ 5 U.S.C. § 632

¹⁰ See 13 C.F.R. § 121.201, NAICS Code 515120 (adopted Oct. 2002).

included in this industry are those "primarily engaged in broadcasting images together with sound."¹¹ According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of \$12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations¹² must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

There are also 380 non-commercial TV stations in the BIA database. Since these stations do not receive advertising revenue, there are no revenue estimates for these stations. We believe that virtually all of these stations would be considered "small businesses" given that they are generally owned by non-commercial entities including local schools and governments and, for the most part, rely on public donations and funding.

Cable Operators. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating \$12.5 million or less in revenue annually.¹³ The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.¹⁴ We last estimated that there were 1,439 cable operators that qualified as small cable companies.¹⁵ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules in this *Report and Order*.

¹¹ NAICS Code 515120. This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

¹² "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

¹³ 13 C.F.R. § 121.201, NAICS code 517510. This NAICS code applies to all services listed in this paragraph.

¹⁴ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd. 7393 (1995).

¹⁵ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹⁶ The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.¹⁷ Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450.¹⁸ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The *Order* adopts a revised core children's programming processing guideline for digital television broadcasters. Our revised guideline will work as follows. Digital broadcasters providing only one stream of free digital video programming will continue to be subject to the existing 3 hours per week core programming processing guideline. DTV broadcasters that choose to provide additional streams or channels of free video programming will, in addition, have the following guideline applied to the additional programming: ½ hour per week of additional core programming for every increment of 1 to 28 hours of free video programming provided in addition to the main program stream. Thus, digital broadcasters providing between 1 and 28 hours per week of free video programming in addition to their main program stream will have a guideline of ½ hour per week of core programming in addition to the 3 hours per week on the main program stream. Digital broadcasters providing between 29 and 56 hours per week of free video programming in addition to their main program stream will have a guideline of 1 hour per week of core programming in addition to the 3 hours per week on the main program stream. Digital broadcasters providing between 57 and 84 hours per week of free video programming in addition to their main program stream will have a guideline of 1½ hours per week of core programming in addition to the 3 hours per week on the main program stream. The guideline will continue to increase in this manner for additional hours of free video programming. In addition, for digital broadcasters, we will require that at least 50 percent of core programming not be repeated during the same week to qualify as core.

The revised guideline discussed above applies to digital broadcasters and the digital programming they provide. Up until the time that analog channels are returned to the Commission, we will continue to apply our current 3 hours per week core children's programming processing guideline to analog channels. Broadcasters will continue to file, on a quarterly basis, their Children's Television Programming Report, on FCC Form 398. We will revise current FCC Form 398 to permit broadcasters to report both analog and digital core programming on that form. Once the new form has been approved for use, we will issue a public notice informing broadcasters of the availability of the form and the date on which the revised form must begin to be used in place of the current form. On that date, reports will also be required to include information about digital core programming. As we have done in the analog context, we will continue to exempt noncommercial television licensees from children's programming reporting requirements with respect to their digital programming.

As a general matter, for digital broadcasters we will not consider a core program moved to the same time slot on another of the station's digital program streams to be preempted as long as the alternate

¹⁶ 47 U.S.C. § 543(m)(2).

¹⁷ 47 C.F.R. § 76.1403(b).

¹⁸ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

program stream receives MVPD carriage comparable to the stream from which the program is being moved and the station provides adequate on-screen information about the move, including when and where the program will air, on both the original and the alternate program stream. Thus, as long as viewers are adequately notified of the move and the program is moved to a program stream that is accessible to a comparable number of viewers, broadcasters may use their multicasting capability to avoid preempting core programming. For both analog and digital broadcasters, however, we will limit the number of preemptions under our processing guideline to no more than 10 percent of core programs in each calendar quarter. Each preemption beyond the 10 percent limit will cause that program not to count as core under the processing guideline, even if the program is rescheduled. We will exempt from this preemption limit preemptions for breaking news.

In addition, the item amends our rules regarding on-air identification of core programming to require both analog and digital broadcasters to identify such programming with the same symbol: E/I. We will also require that this symbol be displayed throughout the program in order for the program to qualify as core. We will apply this revised on-air identification requirement to both commercial and noncommercial broadcasters.

The item applies the commercial limits and policies to all digital video programming directed to children ages 12 and under, whether that programming is aired on a free or pay digital stream. In addition, we interpret the CTA commercial time limits to require that, for both analog and digital broadcasters, with respect to programs directed to children ages 12 and under, the display of Internet website addresses during program material is permitted as within the CTA limitations only if the website: 1) offers a substantial amount of *bona fide* program-related or other noncommercial content; 2) is not primarily intended for commercial purposes, including either e-commerce or advertising; 3) the website's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and 4) the page of the website to which viewers are directed by the website address is not used for e-commerce, advertising, or other commercial purposes (*e.g.*, contains no links labeled "store" and no links to another page with commercial material). Finally, the item also revises our definition of "commercial matter" to include promotions of television programs or video programming services other than children's educational and informational programming.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

Several steps were taken to minimize significant impact on small entities. For the many broadcasters simulcasting the core programming offered on their analog channel on a single digital program stream and offering no other digital free video programming, compliance with the new processing guideline should be automatic, as the digital stream will simulcast the core programming aired on the analog stream and the current 3 hours/week guideline will apply to both streams. For broadcasters choosing to provide additional streams of digital free video programming, the revised guideline establishes a series of graduated benchmarks which increase the core programming obligation in relation to the number of hours of additional free video programming offered by the licensee. Thus, only those stations choosing to provide additional free video programming are subject to the revised processing guideline. We rejected the "pay or play" and "menu" alternatives to the revised guideline largely because these approaches were more administratively burdensome to stations. Under the current and revised guideline, stations have and will continue to have the option of sponsoring core programming on other stations in the market.

In addition, for digital broadcasters we require under the new processing guideline that at least 50 percent of core programming not be repeated during the same week to qualify as core. However, we exempt from this requirement any program stream that merely time shifts the entire programming line-up of another program stream. Also, during the transition, we will not count as repeated programming core programs that are aired on both the analog station and a digital program stream.

For both analog and digital broadcasters, however, the item limits the number of preemptions under our processing guideline to no more than 10 percent of core programs in each calendar quarter. We exempt from this preemption limit preemptions for breaking news, however. We believe that most stations currently do not preempt more than 10 percent of core programs in each calendar quarter. We also note that our processing guideline is averaged over a six-month period, which will provide broadcasters with some scheduling flexibility. In addition, a station that fails to meet the processing guideline because of excessive preemptions may still receive staff-level approval of its renewal application if it demonstrates that it has aired a package of educational and informational programming, including specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children, that demonstrates a commitment to educating and informing children at least equivalent to airing the amount of core programming indicated by the processing guideline. Licensees that do not qualify for staff level approval will have their license renewal applications referred to the Commission where they will have an additional opportunity to demonstrate compliance with the CTA.

Although we have previously exempted noncommercial licensees from the requirement that they identify core programming, we believe that requiring all broadcasters to use the E/I symbol throughout the program to identify core programming will help reinforce viewer awareness of the meaning of this symbol. We will, however, continue to exempt noncommercial television licensees from the other public information initiatives adopted in the 1996 *Children's Programming Report and Order*. Thus, noncommercial television stations will not be required to prepare and file quarterly Children's Television Programming Reports or to provide information identifying programming specifically designed to educate and inform children to publishers of program guides. As is our current practice, we will require noncommercial broadcast stations to maintain documentation sufficient to show compliance with the CTA's programming obligations at renewal time in response to a challenge or to specific complaints. We also decline to require licensees to use high definition, interactivity, or other features to enhance core programming.

Although the *Order* limits the display in children's programming of Internet website addresses to sites established solely for commercial purposes, it does not prohibit the display of all website addresses. In addition, the item does not prohibit direct Internet links in children's programs as several commenters advocated. This approach was adopted in an attempt to balance the interest of digital broadcasters in exploring the potential uses of interactivity with our mandate to protect children from over commercialization. The *Order* also declines to do more than urge voluntary action on the part of broadcasters to ensure that age-inappropriate promotions are not aired in children's programs.

VI. Report to Congress

The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, see 5 U.S.C. s 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register. See 5 U.S.C. §§ 604(b).

APPENDIX D

INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),¹³⁸ the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this *Further Notice of Proposed Rulemaking* ("Notice"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided in paragraph 76 above. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.¹³⁹ In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.¹⁴⁰

A. Need for and Objectives of the Proposed Rules. Our goal in commencing this proceeding is to seek comment on two issues: (1) whether and how we should limit the use of interactivity for commercial purposes in children's television programming; and (2) whether we should apply to Direct Broadcast Satellite service providers the same revised definition of "commercial matter" adopted in the *Report and Order*.

We seek comment in the Notice on the tentative conclusion that we should prohibit interactivity during children's programming that connects viewers to commercial matter unless parents "opt in" to such services. We seek comment on how such a rule could be implemented technologically. We also seek comment on how we would implement such a rule in terms of the statutory limits on commercial time.

We concluded in the *Report and Order* that we will revise our definition of "commercial matter" to include promotions of television programs or video programming services other than children's educational and informational programming. We stated that we will apply this revised definition to television licensees and cable operators. We tentatively conclude in the Notice that we should also amend Part 25 of the Commission's rules to apply this revised definition to Direct Broadcast Satellite service providers, and seek comment on this tentative conclusion.

In addition, the *Report and Order* interprets the CTA commercial time limits to require that, with respect to programs directed to children ages 12 and under, the display of Internet website addresses during program material is permitted as within the CTA limitations only if the website: 1) offers a substantial amount of *bona fide* program-related or other noncommercial content; 2) is not primarily intended for commercial purposes, including either e-commerce or advertising; 3) the website's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and 4) the page of the website to which viewers are directed by the website address is not used for e-commerce, advertising, or other commercial purposes (e.g., contains no links labeled "store" and no links to another page with commercial material). The *Report and Order* applies this restriction to broadcasters and cable operators. We propose in the Notice to apply this restriction to DBS. In addition, we propose to require DBS providers to maintain records sufficient to verify compliance with the commercial limits in children's programming and to make such records available to the public.

¹³⁸ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹³⁹ See 5 U.S.C. § 603(a).

¹⁴⁰ See *id.*

B. Legal Basis. The authority for the action proposed in this rulemaking is contained in Sections 4(i) & (j), 303, 303a, 303b, 307, 309 and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) & (j), 303, 303a, 303b, 307, 309 and 336.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.¹⁴¹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁴² In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁴³ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").¹⁴⁴

In this context, the application of the statutory definition to television stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and therefore might be over-inclusive.

An additional element of the definition of "small business" is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses might therefore be over inclusive.

Television Broadcasting. The Small Business Administration defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business.¹⁴⁵ Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."¹⁴⁶ According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of \$12 million or less. We note, however, that, in assessing whether a business concern

¹⁴¹ 5 U.S.C. § 603(b)(3).

¹⁴² 5 U.S.C. § 601(6).

¹⁴³ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

¹⁴⁴ 15 U.S.C. § 632.

¹⁴⁵ See 13 C.F.R. § 121.201, NAICS Code 515120 (adopted Oct. 2002).

¹⁴⁶ NAICS Code 515120. This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

qualifies as small under the above definition, business (control) affiliations¹⁴⁷ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

There are also 380 non-commercial TV stations in the BIA database. Since these stations do not receive advertising revenue, there are no revenue estimates for these stations. We believe that virtually all of these stations would be considered "small businesses" given that they are generally owned by non-commercial entities including local schools and governments and, for the most part, rely on public donations and funding.

Cable and Other Program Distribution. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating \$12.5 million or less in revenue annually.¹⁴⁸ This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than \$10 million in revenue.¹⁴⁹ We address below each service individually to provide a more precise estimate of small entities.

Cable Operators. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating \$12.5 million or less in revenue annually.¹⁵⁰ The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.¹⁵¹ We last estimated that there were 1,439 cable operators that qualified as small cable companies.¹⁵² Since then, some of those companies

¹⁴⁷ "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

¹⁴⁸ 13 C.F.R. § 121.201 (NAICS Code 513220). This NAICS Code applies to all services listed in this paragraph.

¹⁴⁹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series - Establishment and Firm Size, Information Sector 51, Table 4 at 50 (2000). The amount of \$10 million was used to estimate the number of small business firms because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

¹⁵⁰ 13 C.F.R. § 121.201, NAICS code 517510. This NAICS code applies to all services listed in this paragraph.

¹⁵¹ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd. 7393 (1995).

¹⁵² Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules in this *Report and Order*.

The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹⁵³ The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.¹⁵⁴ Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450.¹⁵⁵ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Direct Broadcast Satellite ("DBS") Service. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution services.¹⁵⁶ This definition provides that a small entity is one with \$12.5 million or less in annual receipts.¹⁵⁷ There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business.¹⁵⁸ The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated \$12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated. Therefore, we will assume all four licensees are small, for the purpose of this analysis.

Electronics Equipment Manufacturers. Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment¹⁵⁹ as well as radio and television broadcasting and wireless communications equipment.¹⁶⁰ These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes

¹⁵³ 47 U.S.C. § 543(m)(2).

¹⁵⁴ 47 C.F.R. § 76.1403(b).

¹⁵⁵ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

¹⁵⁶ 13 C.F.R. § 121.201 (NAICS Code 513220).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ 13 CFR § 121.201 (NAICS Code 334310).

¹⁶⁰ 13 CFR § 121.201 (NAICS Code 334220).

applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.¹⁶¹ Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.¹⁶² The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.¹⁶³ Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.¹⁶⁴ The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Computer Manufacturers. The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.¹⁶⁵ Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities.¹⁶⁶ The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements. At this time, we do not expect that the proposed rules would impose significant additional reporting or recordkeeping requirements. While the requirements proposed in the Notice would have an impact on Direct Broadcast Satellite providers and others, we do not expect the impact to be significant in terms of time or expense to comply. At this time, we expect the requirements to be the same for large and small entities. We seek comment on whether others perceive a need for less extensive recordkeeping or compliance requirements for small entities.

¹⁶¹ 13 CFR § 121.201 (NAICS Code 334310).

¹⁶² Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

¹⁶³ 13 C.F.R. § 121.201 (NAICS Code 513220).

¹⁶⁴ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

¹⁶⁵ 13 C.F.R. § 121.201 (NAICS Code 334111).

¹⁶⁶ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Electronic Computer Manufacturing, Table 4 at 9 (1999).

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁶⁷

The proposals in the Notice would apply equally to large and small entities. We welcome comment on modifications of the proposals if such modifications might assist small entities and especially if such are based on evidence of potential differential impact.

F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals. None.

¹⁶⁷ 5 U.S.C. § 603.

**STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167

This Commission is committed to serving the educational needs of our nation's youth. Not only are our children the cornerstone of our future, but they will, too, be the torch bearers that bring today's digital migration into tomorrow's digital reality.

As a parent and someone who has a passion for new technologies, I am proud that the Commission brings the benefits of the digital transition to America's children. With today's action, more children's educational and informational programming joins the growing ranks of political, sports, news and information and high-definition programming made possible by advances in digital broadcast technology. I want to give special thanks to the many children's advocates, most notably Children NOW, who have fought so hard to advance the interests of children.

In 1990, Congress passed the Children's Television Act to ensure broadcasters were serving children's educational and informational needs through their programming and to limit the amount of commercial matter that may be aired during children's programming. Today, we update Congress' requirements for the digital age. At a time where broadcasters using the public airwaves may now be able to increase their programming by as much six times the content they used to, so too should their obligations to serve our Nation's youth increase.

We substantially increase the children's educational and informational programming obligations for digital multicast broadcasters. We also put in place significant restrictions on worrisome trends of increasing commercialization of children's programming on both analog and digital broadcast and cable systems. Furthermore, our actions are designed to assist parents and children to more readily identify children's educational and informational programming by advocating uniform E/I symbol for this programming that must remain on screen throughout the program.

Parents have come to rely on children's programming as an oasis in an increasingly commercial world. Today, we ensure that parents have a clear path to this haven in the digital age.

This is just one step this Commission takes today in informing our children of the promise of their digital future. Later today, we will launch a kids-page on our website (<http://www.fcc.gov/cgb/kidszone/>) to provide parents with teaching tools and children with learning tools about the many facets of communications policy that touches our children's everyday lives.

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167

As a country, we have always protected, nurtured and educated our children. We recognize they are a precious resource, and that our future as a nation is inextricably intertwined with their future. That is why today we embrace a regulatory framework that recognizes the significant role media plays in shaping and educating our children. Today we look to the future and the many benefits, as well as potential harms, that are inherent in our digital migration. Today, we ensure that children will benefit from an increase in educational and information (E/I) programming, that such programming will be easier for parents to find, and that the regulations we have in place to protect children from over-commercialization cannot be circumvented by new technologies.

Perhaps most importantly, we require that the amount of programming available for children will increase exponentially with the amount of programming a broadcaster airs. As broadcasters begin to provide additional streams of digital programming, children will receive a part of those benefits. For example, on an all-news channel, a broadcaster can provide a weekly segment that explains the top stories to children of varying ages, much like the Kids Page that is part of the Washington Post. At the same time, we are giving broadcasters the flexibility to provide this programming in a manner that responds to the needs of families. For example, we allow broadcasters to place most of their E/I programming on one channel, making it easier for parents to direct their children to appropriate content. We also allow broadcasters to use some repeat programming per week since studies show young children learn better through repetitive messages. At the same time, we are ensuring that a sufficient amount of new programming is provided on a weekly basis.

We also recognize that advances in technology bring not only benefits, but unexpected harms. As technology develops and internet access and interactivity are offered through programs directed toward children, parents must be involved. Although I recognize we need to explore this issue further, I am pleased that we tentatively concluded that interactive features that bring a child to commercial material should not be permitted absent parental approval. And, as we continue to explore these issues, we also clearly state that broadcasters and cable companies cannot circumvent our rules on commercial limits in children's programming through the use of interactivity and other technological developments.

Finally, we all need to increase our efforts to help parents make informed choices about their children's viewing. This has been one of my main goals during my tenure at the FCC, and why I worked on the development of The Parents Place web page. (www.fcc.gov/parents). While it is important to focus on what children should not be watching, it is equally important to provide parents the tools to navigate the programming options that are available to them so they can tap into the numerous, creative and educational programs currently available.

Today, we take several steps in this direction by requiring broadcasters to provide E/I information throughout the duration of the program, rather than for a few brief seconds at the beginning of the program. We also require that the symbol identifying educational programming be uniform across all platforms. I believe this will empower parents and enable broadcasters to better serve the interests of their communities. Yet, the progress we make today should not be confined to the four corners of this document. I continue to encourage broadcasters and cable programmers to build on the success of many of today's children's programs and work with us to make it easier for parents to learn more about the educational value of the programming that is offered.

We have a unique opportunity to tap into new technologies to educate and inform children and parents. We must not squander this opportunity by inactivity or lack of creativity.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Children's Television Obligations of Digital Television Broadcasters, MM Docket No. 00-167

I am truly pleased that we have before us today this item concerning the obligations of broadcasters toward children in the digital era. It is something I have wanted us to act on for a long time, and I thank the Chairman and my colleagues for their work on this, particularly over the last few days as we strove to improve the item that came to us. While none of us may call it perfect or everything we'd like to have, it is a huge step forward and something we can build on.

The Commission long ago recognized that broadcasters' public service responsibilities include providing programming that meets the needs of children. Indeed, Congress made that clear for us. In the Children's Television Act, Congress directed the Commission to protect children against excessive advertisements on television and required the Commission to consider during the license renewal process whether a station's programming has served the educational and informational needs of children. Yet, for too long, America's children have been ignored as the digital era unfolds. Today, the Commission takes important initial steps towards making sure we and our kids harvest the full benefits of digital television.

This is so important. Television plays such an enormous role in children's development. By the time the average child reaches adulthood, he or she will have watched over 10,000 hours of television and been bombarded with hundreds of thousands of commercials. Television has vast and growing powers to educate and inform — or to misinform in wrong and harmful ways.

We take several important actions in this item. First, broadcasters will need to increase the amount of children's programming commensurate with the increase in overall programming. Digital television promises high definition programming, multicasting, and datacasting that will literally transform free, over-the-air television by providing consumers new and valuable services. We provide broadcasters with the flexibility to take advantage of these new opportunities, but require that they do so in child-friendly ways. We ensure that programming for the young audience is broadcast with regularity and predictability. We provide parents with additional tools to locate and take advantage of educational and informational programming. And while we provide the needed opportunity to explore innovative new interactive technologies, we do so in a manner that protects children from excessive commercialization and we provide ample opportunity for corrective steps that may become necessary as the transition unfolds.

All of the steps we take today, however, will be meaningless unless the Commission enforces its rules. As we enter a new license renewal cycle, we must take seriously our obligation to ensure that broadcasters are meeting their responsibilities under the Children's Television Act. To this end, the Commission commits to seeking public comment and issuing a report on how well we are meeting Congress' objectives. We have further committed to a follow-up proceeding to make certain that we continue to protect children as technology advances. So an important outcome here is that we make these children's television obligations part of a living, ongoing process, regularly monitored and reported and open to new actions as the digital transition occurs.

All of these steps are important to guarantee that we do not return to a time when G.I. Joe, Mighty Morphin Power Rangers, America's Funniest Home Videos, the Jetsons, and the Flintstones were held up as examples of programs that met the educational and informational needs of children. Parents have a right to expect that a program that has reportedly been taken off the air in other countries due to excessive violence will not count as core children's programming here. Nor should parents have to worry that new technologies could be used to circumvent the advertising limits. We should all be concerned when recent

independent reports find that one-fourth of the educational and informational programming served up to our children has little educational value.

This item should advance the quantity and quality of children's programming. Yet, there is much work left to do, both as regards children's TV and the more general public interest obligations of DTV broadcasters. So I look forward to our completing, hopefully very soon, the proceeding on public disclosure of broadcaster activities. Even more importantly, I hope we will get a broad and far-reaching NPRM issued in the next few weeks so that we can address the full range of public interest issues, including, among others, how the digital transition can enhance political discourse, improve access to the media for those with disabilities, and increase localism, diversity, and competition on the people's airwaves. The vast majority of television stations are already broadcasting in digital and some 400 stations across the country are already multicasting. And yet, those broadcasters do not know what they must do to discharge their public interest obligations on their new channels. Viewers are equally in the dark. We really can't delay any longer in bringing some certainty for both broadcasters and the public. If the American people are to realize the full benefits of DTV, we have to call the public interest issues forward and accord them the high priority they deserve. My hope is that both the disclosure item and the more general NPRM will be on next month's agenda.

Again, thank you, Mr. Chairman. Thank you colleagues. Thank you Bureau. And a special thank you to our hard-working Eighth Floor staffs, some of whom were here until the wee hours this very morning improving the item.

**STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

*Re: Children's Television Obligations of Digital Television Broadcasters, Report and Order, MM
Docket No. 00-167*

I'm pleased to support this Order promoting children's programming on digital television. I recognize that the action we take today will increase the obligations placed on broadcasters, but I also recognize the vital role that broadcasters play in serving the interests of children—and their parents. We therefore take steps to ensure the continuation of our children's programming guidelines as well as facilitate parents' ability actually to find the programming.

Parents often complain that there is not enough broadcast programming that is suited for family viewing. This is why I have long advocated a return of the Family Viewing Hour. While the new guidelines we adopt today may not increase the amount of programming that appeals to the whole family, it is certainly a step in the right direction for parents and their children. It is my hope that broadcasters take advantage of improvements in technology and compression to devote even more time and ingenuity to family or children's programming. For example, they might create an exclusively "family TV" or "kids TV" channel on one of their multicast streams. Such a channel could also employ exciting, educational interactive features. I therefore look forward to exploring in the Further Notice the ways in which we can encourage flexibility and interactivity without sacrificing the accessibility of children's programming or opening the door to creeping commercialization.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Children's Television Obligations of Digital Television Broadcasters, Report and Order,
MM Docket No. 00-167*

Quality educational and informational television can enlighten our children, feed their curiosity, and teach fundamental skills, ethics and behaviors for our society. I thank the Chairman and my colleagues for their commitment to this exceptionally valuable proceeding.

Today we've taken serious steps to update our rules and policies to protect children. We provide certainty for broadcasters to know how their obligation to serve the child audience translates in the digital world. We offer parents more and better information to help their children make appropriate viewing choices. And we recognize that new technologies can lead to previously unimagined enriching educational experiences, while we take care to prevent potential new harms.

Congress has affirmed the need for broadcasters to protect and serve children. Broadcasters must provide programming specifically designed to serve the particular needs of children, which is examined during license renewals. Like other providers of programming aimed at young children, they also must protect children from excessive commercialization. In enacting the legislation, the House Report clearly states that the presence of cable and VCRs "does not obviate the public interest responsibility of individual broadcast licensees to serve the child audience," and that "total reliance on marketplace forces is neither sufficient nor justified to protect children from potential exploitation by advertising or commercial practices."¹

These same principles must be reinforced not just in today's television environment but for the onset of digital television and tomorrow's launch into interactive television. In all its forms, television continues to play an influential role in a child's life. Nearly all children watch television before their first exposure to formal education. Children watch on average three hours of television per day, and more than half of all children have a television in their bedroom. Without appropriate safeguards, we run the risk that our children become captive to increasingly invasive advertising. Most broadcasters today steadfastly serve their child audience. Our policies are designed to ensure that all broadcasters will.

Digital television offers vast educational potential. It provides an opportunity for broadcasters to nurture the emotional, cognitive, behavioral and other needs of children through more and better educational and informational programming. As broadcasters choose to multicast, for example, their expanded capacity can be used proportionately to further the needs of their young viewers. Indeed, we give broadcasters the flexibility to outdo one another in how they bring this programming to children using their multiple programming streams.

There is much more work to do to provide broadcasters and the public with certainty regarding the entirety of their public interest obligations in the digital era. I welcome what I expect will be an equally constructive dialogue on resolving how the remaining public interest obligations translate to digital. The high level of cooperation in this proceeding bodes well for also achieving consensus on the broader public interest examination in the weeks to come.

While this is merely the start, our children are our future and I'm delighted we stepped up to protect them. Our children should be the ones exploiting the potential of digital television, and not the other way around.

¹ *Children's Television Act of 1990*, H.R. Rep. 101-385 at 6 (1989).